IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4212 OF 2004

Smt.Godabai Digambar Kirve & Anr. ..Petitioners

Versus

Shri Maruti Genu Waragade
Deceased through heirs Shri Laxman
Maruti Waragade & Ors.....Respondents

Mr. Anil V. Anturkar, for the Petitioners
Mr. P.B. Shah, for the Respondent Nos. 1A, 1C to 1E, 2 to 4, 6 and 7.

CORAM: F.I. REBELLO J.
DATE : 10th January, 2005

P.C.:

. Petitioners herein, original landlords impugned the order dated 21st December, 1989 whereby the Revision Application preferred by the Respondents was allowed.

2. One Maruti Genu Waragade since deceased had filed the suit for recovery of possession in the year 1971 being Civil Suit No.234 of 1971 on the ground that he was a tenant in possession and was forcibly dispossessed from the suit land in the year 1971. As the issue involved tenancy that issue was sent to the Authorities under the Tenancy Act. The Tenancy Authority recorded a finding in favour of Maruti holding that the deceased Maruti was a tenant and was in lawful possession of the suit land till 3rd July, 1970. Aggrieved the petitioner preferred an Appeal. The learned Appellate Authority was pleased to allow the Appeal. The Appellate Authority proceeded on the footing that Digambar from whom the

present petitioners claim was a lunatic person and there is disability on his part and that the appellant was a widow. Further that sufficient opportunity had not been given to the appellant to lead evidence and no cogent evidence had come to establish tenancy of the respondents. The revenue entries were rejected on the ground that though notice was served to the landlord he was lunatic and, therefore, the entries could not be considered. The Revisional Authority on a consideration of the material before it recorded a finding that deceased Maruti was inducted as a tenant some time in the year 1955. There is also a finding recorded that the name of deceased Maruti was entered in the record of rights and that the 7 x 12 extracts show that Maruti was a tenant in respect of the land and he was continued as a tenant. The Revisional Authority noted that Digamber became mad in the year 1959 and one Atmaram Ganpati Kirve was appointed as his guardian to look after the property and the said Atmaram Kirve was recovering the rent of the suit land from Maruti. He had also applied under Section 88C of the Tenancy Act for obtaining exemption in respect of the suit land and other lands belonging to the lunatic Digamber. The exemption certificate was granted in respect of the suit land on 18th May, 1963, but subsequently steps under Section 33B of the Tenancy Act for obtaining possession were not taken by the said Atmaram. The legal guardian filed a suit against the tenant for recovery of rent. A decree was passed which was on the record of the trial Court. From that record it appears that Maruti Ganu was cultivating the land from the year 1958-59 till 1960-61 and he

was in arrears of rent for the said years. The 32G proceedings were considered and considering that material and the revenue extract including of the year 1969-70 which shows Maruti as a tenant, set aside the order of the Appellate Authority and held in favour of the Respondents herein and restored the order of the original Authority. This order was passed in the year 1989.

3. The petition is filed in the year 2004. In the petition itself no reasons have been given explaining the laches. It is only subsequently that an affidavit has been filed to explain the laches between the years 1989 and 2004.

4. On behalf of the petitioners learned Counsel contends that the affidavit would indicate that the cause shown has been sufficiently explained and this Court should not on that count dismiss the petition. It is also pointed out that from the order of the Revisional Authority itself it is clear that the finding recorded is that Maruti was in possession between 1958-59 till 1960-61. The issue framed and referred to the Authority was whether Maruti was in possession in the year 1970. A perusal of the impugned order would show that what the Revisional Authority has stated is based on the suit filed by the landlord for recovery of rent. In the pleadings it was admitted position that Maruti was in possession from 1958-59 till 1960-61. The observations, therefore, are based on those pleadings and not that Maruti was not in possession in 1968-69. The Revisional Court also noted that there are

survey entries in favour of Maruti in the year 1969-70. The learned Appellate Court has rejected those entries on the ground that at that time Digambar was a lunatic. As noted earlier guardian had been appointed for Digamber. There is a presumption in respect of the revenue entries. That presumption can be rebutted only if documentary evidence has been led on behalf of the petitioners herein. That has not been done and on the contrary the various documents considered by the Revisional Authority will clearly indicate that Maruti was in possession as a tenant. The proceedings for exemption taken at the behest of Digamber also can be noted. Nothing has come on record as to how the Petitioners came in possession of the land and considering the documentary evidence on record it is clear that there is no error in the finding recorded by the Revisional Authority that Maruti was in possession as a tenant. To my mind the order does not suffer any error apparent on the face of the record.

5. In the light of that Petition rejected.

(F.I.REBELLO, J.)